

#3



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent application of : Group Art Unit:  
John S. Quarterman, *et al.* : 2121  
Serial No.: 09/929,608 : Examiner:  
Filed: August 14, 2001 : Not yet Assigned  
For: PERFORMANCE MEASUREMENT SYSTEM : Attorney Docket No.:  
FOR LARGE COMPUTER NETWORK : 9674 - 20 C11 (154577)

PETITION UNDER 37 C.F.R. § 1.47(a)

Commissioner for Patents  
Washington, D.C. 20231

RECEIVED  
MAR 21 2002  
OFFICE OF PETITIONS

Sir:

The signing Applicants respectfully petition under 37 C.F.R. § 1.47(a) that the above-referenced application be made by them on behalf of themselves and a nonsigning inventor. The enclosed check covers, among other things, the petition fee of \$130.00 required under 37 C.F.R. 1.17(h). If any additional fee is found to be due in connection with this petition, authorization is hereby provided to charge the fee, or credit any over-payment, to Deposit Account No. 50-0573.

This petition is being submitted with (1) a Response to a Notice of Missing Parts, which was mailed from the Patent Office on August 28, 2001; (2) a Petition for a four-month extension of time; (3) Declarations and Powers of Attorney signed by seven of the eight named inventors for the application; and (4) Declaration of Steven A. Nash, with Exhibits A through D, comprising proof of the pertinent facts set forth herein.

CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8(a)	
I hereby certify that this paper, along with any paper referred to as being attached or enclosed, is being deposited with the United States Postal Service on the date indicated below, with sufficient postage, as first class mail, in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231.	
BY	<u>[Signature]</u>
DATE:	<u>2/28/02</u>

### Pertinent Facts

Mr. Martin McCarthy is named as an inventor for the above-identified patent application. Employees of Matrix.Net have made numerous efforts to obtain Mr. McCarthy's signature on the Declaration for the application.

Having exhausted all reasonable efforts, Matrix.Net requested that its attorneys attempt to obtain Mr. McCarthy's signature. Mr. Steven A. Nash, an attorney registered to practice before the U.S. Patent and Trademark Office, sent, via DHL courier, copies of the complete specification, including the claims and drawings, and a Declaration and Power of Attorney for the patent application to Mr. McCarthy for his signature on December 21, 2001. In a letter accompanying the documents, it was requested that Mr. McCarthy review the application and sign the Declaration and Power of Attorney. The letter also requested that Mr. McCarthy return the signed document to Mr. Nash by facsimile. The DHL package was delivered to Mr. McCarthy on December 27, 2001.

On January 20, 2002, Mr. McCarthy sent an e-mail to Mr. Nash indicating that Mr. McCarthy has neither intention of, nor interest in, assisting in the application. The e-mail indicated that Mr. McCarthy does not wish to assist in the application because he believes that he and others have been treated unreasonably by Matrix.Net.

To date, neither Mr. Nash nor Matrix.Net have received any executed copies of the Declaration from Mr. McCarthy. Therefore, it is contended that Mr. McCarthy has refused, and continues to refuse, to sign the Declaration and Power of Attorney for this application.

It is noted that the Notice of Missing Parts for this application was mailed from the Patent Office on August 28, 2001. February 28, 2002 is six months from the date that the Notice was mailed. The filing of this Petition is necessary to preserve the rights of the inventors and Matrix.Net, the assignee of the application, and to prevent irreparable harm.

### Last Known Address

The last known address, which is believed to be current, of Mr. Martin McCarthy is:

8 Angus Place  
Glasgow G52 3HF  
Scotland, United Kingdom

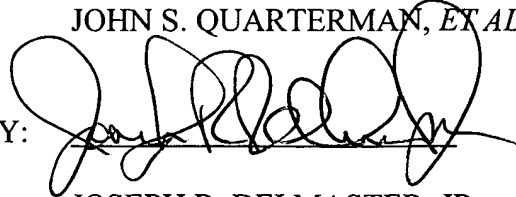
Conclusion

It is respectfully requested that the application be prosecuted under 37 C.F.R. § 1.47(a) on behalf of the signing inventors and the nonsigning inventor, Mr. Paul Murphy.

Respectfully submitted,

JOHN S. QUARTERMAN, *ET AL.*

BY:

A handwritten signature in black ink, appearing to read "Joseph R. Delmaster, Jr.", written over a horizontal line.

JOSEPH R. DELMASTER, JR.

Registration No. 38,123

Drinker Biddle & Reath LLP

One Logan Square

18<sup>th</sup> and Cherry Sts.

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Attorney for Applicants



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent application of	:	Group Art Unit:
John S. Quarterman, <i>et al.</i>	:	2121
	:	
Serial No.:	:	Examiner:
	:	Not yet Assigned
Filed:	:	
	:	Attorney Docket No.:
For:	:	9674 – 20 CI1 (154577)
PERFORMANCE MEASUREMENT SYSTEM	:	
FOR LARGE COMPUTER NETWORK	:	

**DECLARATION OF STEVEN A. NASH**

I, Steven A. Nash, declare as follows:

1. I am an attorney registered to practice before the U.S. Patent and Trademark Office (Registration No. 45,507).
2. Mr. Martin McCarthy of Glasgow, Scotland is a named inventor for the above-identified patent application.
3. On information and belief, Mr. McCarthy has refused to execute a Declaration for the above-identified patent application despite repeated requests from the successor in interest of his former employer, Matrix.Net.
4. Via DHL courier, I sent complete copies of a Declaration and Power of Attorney and a complete specification, including the claims and drawings, for the above-identified patent application in a package addressed to Mr. McCarthy on December 21, 2001.
5. In a letter accompanying the documents, I requested that Mr. McCarthy review the application and sign the Declaration and Power of Attorney. The letter also requested that Mr. McCarthy return the signed document to me by facsimile. Copies of the letter and the DHL air bill are respectively attached hereto as Exhibits A and B.

6. The DHL package was delivered to Mr. McCarthy on December 27, 2001. A printout from the DHL web site showing that the package was signed for by "M MACARTHY" on that date is attached hereto as Exhibit C.


7. On January 20, 2002, I received an e-mail from Mr. McCarthy, a true and correct printout of which is attached hereto as Exhibit D. The e-mail indicated that Mr. McCarthy has neither intention of, nor interest in, assisting in the application because he believes that Matrix.Net has treated him and others unreasonably.

8. As of the date of this declaration, I have not received an executed copy of the Declaration from Mr. McCarthy.

9. Based, in part, on the e-mail of January 20, 2002, I believe that Mr. McCarthy has refused, and continues to refuse, to sign a Declaration for the application.

I hereby declare that all the statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by a fine or imprisonment, or both under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Date: February 27, 2002

  
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Steven A. Nash  
Registration No. 45,507

Law Offices

December 20, 2001

Via DHL Courier

Mr. Martin McCarthy  
8 Angus Place  
Glasgow  
G52 3 HF  
Scotland, United Kingdom

RE: United States Patent Application filed on behalf of Matrix.Net  
Our File: 155060

Dear Mr. McCarthy:

I write to you at the request of Matrix.Net. Enclosed herewith are copies of a Declaration and Power of Attorney, an Assignment, and a complete specification, including 47 claims and 7 drawings, for United States Patent Application No. 09/929,608 for a PERFORMANCE MEASUREMENT SYSTEM FOR LARGE COMPUTER NETWORK (Attorney Docket No. 9674-20 C11).

Matrix.Net has named you as an inventor of subject matter claimed in this application. That means that any patents ultimately issuing from the application may be issued in your name and the names of the other inventors. The application was filed in the United States Patent Office on August 14, 2001.

Please review the specification, including the claims and drawings. If after your review, you believe that you are not an actual inventor of the subject matter claimed in the application, I would appreciate your advising me of that fact. (The claims appear near the end of the application.) If that is the case, we will be happy to remove your name from the list of inventors.

If you believe that you are an inventor of the claimed subject matter, please sign the Declaration attached to the back of the application. Please also sign the Assignment and have it witnessed. I would appreciate you sending the signed documents back to me by facsimile at (215) 988-2757 **before January 28, 2002**. However, before signing, please note the following about the statements made in the Declaration concerning the duty of disclosure to the U.S. Patent Office:

U.S. Patent Office rules require all individuals involved in the preparation or prosecution of a patent application to make a complete disclosure to the Patent Office of all information that is "material" to the examination of the application. This is provided for by Title 37, Code of Federal Regulations, Section 1.56(a) ("Rule 56"), referred to in the Declaration. Information is material if:

Established  
1849

Mr. Martin McCarthy

December 20, 2001

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(1) it establishes, either by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) it refutes, or is inconsistent with, a position the applicant takes in: (i) opposing an argument of unpatentability relied on by the Patent Office, or (ii) asserting an argument of patentability.

Any failure to disclose such information could result in the patent being held unenforceable if it is litigated, and could expose the patent owner to attorney fees and antitrust charges.

To satisfy this duty of disclosure, the U.S. Patent Office rules require the filing of an Information Disclosure Statement which identifies all material information known to the named inventors, the attorneys prosecuting the application, and every other person substantively involved with preparation or prosecution of the application. The kind of information which should be disclosed includes, but is not limited to, the following:

a. prior patents or prior publications which show or suggest the invention or parts of it;

b. prior products or processes, either your own or those of a competitor, which show or suggest the invention or parts of it;

c. any written or oral disclosures (whether under secrecy or not), offers of samples, displays at trade shows, any outside uses or sales, offers to sell (even if a sale did not take place) or any outside testing which occurred more than one year prior to filing the application; and

d. related prior activities of others, e.g., prior concepts and experimental work of others, prior to the filing date of the application.

If you are aware of any information known or believed to be material, please bring it to my attention immediately so that we can include it in the Information Disclosure Statement as may be required. If there are any questions concerning the materiality of what may be considered prior art, please call me.

The duty of disclosure continues during the entire prosecution of the application. If you become aware of additional information material to this application at a later date, please bring it to my attention immediately.

Mr. Martin McCarthy

December 20, 2001

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To summarize, Matrix.Net requests that you execute the enclosed Declaration and Power of Attorney and Assignment. It is requested that you sign the documents and fax them back to me **before January 28, 2002**. If you decline to sign for any reason, I would also appreciate you letting me know by facsimile or email, at least a few days before that date. January 28 is the last day that inventors' signatures can be submitted to the Patent Office with a three-month extension in response to a Notice of Missing Parts issued by the Patent Office.

I appreciate your time and consideration in this matter and look forward to your response.

Sincerely yours,



Steven A. Nash

SAN/kak  
Enclosures





**Nash, Steven A.**

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**From:** Martin McCarthy [marty@ancient-scotland.co.uk]  
**Sent:** Sunday, January 20, 2002 6:25 AM  
**To:** Nash, Steven A.  
**Cc:** tjenkins@matrix.net  
**Subject:** Matrix.Net US Patent Application

Your ref: 155060

Dear Mr Nash

Thanks for your recent letter, dated 20th December 2001, regarding Matrix.Net's patent application.

Although I do consider myself to be an inventor of the subject matter claimed in the application, I am afraid that I have neither intention of, nor interest in, assisting further in the application. This being due to what, in my opinion, has been very unreasonable behaviour by Matrix.Net towards me and other past and present employees.

I am surprised that you have been asked to write to me on this matter as I informed Matrix.Net that this was the situation several months ago.

Sorry that I cannot assist further.

Yours sincerely,  
Martin McCarthy

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Martin McCarthy  
marty@ancient-scotland.co.uk